



PATENT

Attorney Docket No. 05793.3068-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
)  
Kevin HUENNEKENS et al. )  
) Group Art Unit: 3693  
Application No.: 09/897,775 )  
) Examiner: Kristen Sachwitz Apple  
Filed: June 29, 2001 )  
) Confirmation Number: 9815  
For: SYSTEMS AND METHODS )  
FOR PROCESSING CREDIT )  
CARD TRANSACTIONS THAT )  
EXCEED A CREDIT LIMIT )

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Sir:

**APPEAL BRIEF UNDER BOARD RULE § 41.37**

In support of the Notice of Appeal filed April 12, 2007, and further to Board Rule 41.37, Appellants present this brief and encloses herewith a check for the fee of \$500.00 required under 37 C.F.R. § 41.20(b)(2).

This Appeal responds to the final rejection of claims 1-66 in the Office Action mailed October 12, 2006, the Advisory Action mailed February 26, 2007, and the Notice of Panel Decision from Pre-Appeal Brief Review mailed June 4, 2007.

If any additional fees are required or if the enclosed payment is insufficient, Appellants request that the required fees be charged to Deposit Account No. 06-0916.

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**I. REAL PARTY IN INTEREST**

Capital One Financial Corporation is the real party in interest.

## **II. RELATED APPEALS AND INTERFERENCES**

There are currently no other appeals or interferences, of which Appellants, Appellants' legal representative, or Assignee are aware, that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

### **III. STATUS OF CLAIMS**

The final rejection of claims 1-66 is being appealed. A listing of the claims on appeal is found in the attached Claims Appendix.

**IV. STATUS OF AMENDMENTS**

All amendments have been entered, as reflected in the attached CLAIMS

APPENDIX. Claims 1-66 remain pending and are the subject of this appeal.

## **V. SUMMARY OF CLAIMED SUBJECT MATTER**

Independent claim 1 is directed to a method for managing a financial transaction associated with a financial account, wherein the transaction would cause an outstanding balance of the financial account to exceed a credit limit. See e.g., specification at page 4, ¶ 014, page 5, ¶ 015, page 7, ¶ 020. The method includes the steps of determining a merchant type for a merchant which is a party to the transaction. See e.g., Fig. 2, step 204, Fig. 3, step 302, specification at page 7, ¶ 020, page 8, ¶ 021. The method also includes determining a merchant credit risk associated with the determined merchant type. See e.g., Fig. 3, steps 304, 308, specification at page 8, ¶ 022, page 9, ¶ 023, page 10, ¶¶ 024-025. The method also includes the step of comparing the merchant credit risk to a threshold value defining an acceptable credit risk and approving the transaction based on the comparison of the merchant credit risk with the threshold value. See e.g., Fig. 3, step 306, specification at page 5, ¶ 014, page 9, ¶ 022, page 12, ¶ 029.

Independent claim 21 recites a computer for managing a financial transaction associated with a financial account, wherein the transaction would cause an outstanding balance of the financial account to exceed a credit limit. See e.g., Fig. 1, element 106, specification at page 4, ¶ 014, page 5, ¶ 015, page 7, ¶ 020. The computer includes a memory having programming instructions and a processor, responsive to the programming instructions. See e.g., Fig. 1, element 106, 108, specification at page 6 ¶ 019. The processor is configured to determine a merchant type for a merchant which is a party to the transaction. See e.g., Fig. 2, step 204, Fig. 3, step 302, specification at page 7, ¶ 020, page 8, ¶¶ 021 and 022. The processor is also configured to determine a merchant credit risk associated with the determined merchant type. See e.g., Fig. 2,



step 204, Fig. 3, step 302, specification at page 7, ¶ 020, page 8, ¶¶ 021 and 022. The processor is further configured to compare the merchant credit risk to a threshold value defining an acceptable credit risk and approve the transaction based on the comparison of the merchant credit risk with the threshold value. See e.g., Fig. 3, step 306, specification at page 5, ¶014, page 9, ¶ 022, page 12, ¶ 029.

Independent claim 41 recites a system for managing a financial transaction associated with a financial account, wherein the transaction would cause an outstanding balance of the financial account to exceed a credit limit. See e.g., specification at page 4, ¶ 014, page 5, ¶ 015, page 6, ¶ 017, page 7, ¶ 020. The system includes means for determining a merchant type for a merchant which is a party to the transaction. See e.g., Fig. 1, elements 106 and/or 108, Fig. 3, specification at page 8, ¶¶ 021 and 022. The system further includes means for determining a merchant credit risk associated with the determined merchant type. See e.g., Fig. 1, elements 106 and/or 108, Fig. 3, specification at page 8, ¶¶ 021 and 022. The system also includes means for comparing the merchant credit risk to a threshold value defining an acceptable credit risk. See e.g., Fig. 1, elements 106 and/or 108, Fig. 3, specification at page 8, ¶¶ 021 and 022, page 12, ¶ 029. The system also includes means for approving the transaction based on the comparison of the merchant credit risk with the threshold value. See e.g., Fig. 1, elements 106 and/or 108, Fig. 3, specification at page 8, ¶¶ 021 and 022.

Dependent claims 42-60 depend from claim 41. Dependent claim 42 recites means for determining whether to contact a party to the transaction to obtain information concerning the transaction for use in determining a credit risk associated

with the transaction. See e.g., Fig. 1, elements 106 and/or 108, Fig. 3, specification at page 9, ¶ 023. Dependent claim 42 recites means for determining whether the potential transaction is an emergency transaction (see e.g., Fig. 1, elements 106 and/or 108, Fig. 4, specification at page 10, ¶ 026) and means for approving the potential transaction when the contacted party indicates that the transaction is an emergency transaction (see e.g., Fig. 1, elements 106 and/or 108, Fig. 4, specification at page 10, ¶ 026). Dependent claim 44 recites means for approving the potential transaction based on a determination that declining the potential transaction would cause inconvenience to a holder of the financial account. See e.g., Fig. 1, elements 106 and/or 108, Fig. 4, specification at page 11, ¶¶ 026 and 027. Dependent claim 45 recites means for allowing a credit analyst to determine whether to approve the potential transaction when the credit analyst is available. See e.g., Fig. 1, elements 106 and/or 108, Figs. 3 and 4, specification at page 9, ¶¶ 022 and 023, page 11, ¶ 028. Dependent claim 46 recites means for determining a type of product associated with the transaction (see e.g., Fig. 1, elements 106 and/or 108, Fig. 3, specification at page 9, ¶ 023), means for determining a credit risk associated with the transaction based on the determined type of product associated with the transaction (see e.g., Fig. 1, elements 106 and/or 108, Fig. 3, Fig. 4, specification at page 9, ¶ 023, page 10, ¶¶ 026, page 11, 027). Claim 46 further recites means for comparing the product credit risk associated with the threshold value (see e.g., Fig. 1, elements 106 and/or 108, Fig. 4, specification at page 10, ¶¶ 026, page 11, 027) and means for approving the transaction based the comparison of the determined product credit risk with the threshold value (see e.g., Fig. 1, elements 106 and/or 108, Fig. 4, specification at page 10, ¶¶ 026, page 11, 027).

Dependent claim 47 recites means for determining whether the product is associated with at least one of a consumer emergency and a consumer necessity (see e.g., Fig. 1, elements 106 and/or 108, Fig. 4, specification at page 10, ¶ 026, page 11, ¶ 027) and means for allocating a low credit risk to the product when the product is determined to be associated with at least one of a consumer emergency and a consumer necessity (see e.g., Fig. 1, elements 106 and/or 108, Fig. 4, specification at page 10, ¶ 026, page 11, ¶ 027). Dependent claim 48 recites means for determining a low merchant credit risk for merchant types corresponding to at least one of a restaurant, a grocery store, and a fuel dispenser. See e.g., Fig. 1, elements 106 and/or 108, Fig. 4, specification at page 8, ¶ 021, page 9, ¶ 022, page 10, ¶ 026, page 11, ¶ 027. Dependent claim 49 recites means for determining a low merchant credit risk for merchant types corresponding to merchants associated with a historically low occurrence of fraud. See e.g., Fig. 1, elements 106 and/or 108, Fig. 3, Fig. 4, specification at page 9, ¶ 022, page 10, ¶ 024. Dependent claim 50 recites means for determining a low merchant credit risk for merchant types corresponding to merchants offering products deemed to be of an essential nature to a consumer. See e.g., Fig. 1, elements 106 and/or 108, Fig. 3, Fig. 4, specification at page 9, ¶ 022, page 10, ¶ 024, page 12, ¶ 029. Dependent claim 51 recites means for determining a high merchant credit risk for merchant types corresponding to at least one of mail order merchants, telephone order merchants, and Internet order merchants. See e.g., Fig. 1, elements 106 and/or 108, Fig. 3, specification at page 9, ¶ 023. Dependent claim 52 recites means for determining a high merchant credit risk for merchant types corresponding to merchants associated with a historically high occurrence of fraud. See e.g., Fig. 1,

elements 106 and/or 108, Fig. 3, specification at page 10, ¶ 024. Dependent claim 53 recites means for increasing the credit limit by an amount equal to at least a value associated with the transaction. See e.g., Fig. 1, elements 106 and/or 108, Fig. 4, specification at page 11, ¶ 027. Dependent claim 57 recites means for declining the potential transaction if the potential transaction plus the outstanding balance exceeds the credit limit by a predetermined amount. See e.g., Fig. 1, elements 106 and/or 108, Fig. 4, specification at page 11, ¶¶ 026, 027. Dependent claim 58 recites means for adjusting the merchant credit risk based on a time of day the transaction is requested. See e.g., Fig. 1, elements 106 and/or 108, Fig. 3, specification at page 12, ¶ 029. Dependent claim 59 recites means for adjusting the merchant credit risk based on the medium in which the customer is making the transaction. See e.g., Fig. 1, elements 106 and/or 108, Fig. 3, specification at page 12, ¶ 029. Claim 60 recites means for adjusting the merchant credit risk based on an account history of the customer making the transaction. See e.g., Fig. 1, elements 106 and/or 108, Fig. 3, specification at page 12, ¶ 029.

Independent claim 61 recites a method for managing a financial transaction associated with a financial account, wherein the transaction would cause an outstanding balance of the financial account to exceed a credit limit. See e.g., Fig. 2, specification at page 7, ¶ 020. The method includes the steps of determining a type of product associated with the transaction. See e.g., specification at page 10, ¶ 026, page 11, ¶ 027. The method also includes determining a credit risk associated with the transaction based on the determined type of product associated with the transaction. See e.g., specification at page 10, ¶ 026, page 11, ¶ 027. The method further includes the steps

of comparing the product credit risk associated with the threshold value. See e.g., specification at page 10, ¶ 026, page 11, ¶ 027. The method further includes approving the transaction based the comparison of the determined product credit risk with the threshold value. See e.g., specification at page 11, ¶ 028.

Independent claim 63 recites a computer for managing a financial transaction associated with a financial account, wherein the transaction would cause an outstanding balance of the financial account to exceed a credit limit. See e.g., Fig. 1, specification at page 3, ¶ 007, page 4, ¶ 008, page 5, ¶¶ 014, 015, 016. The computer includes a memory having programming instructions and a processor, responsive to the programming instructions. See e.g., Fig. 1, element 106, 108, specification at page 6 ¶ 019. The processor is configured to determine a type of product associated with the transaction and to determine a credit risk associated with the transaction based on the determined type of product associated with the transaction. See e.g., Fig. 1, element 106, 108, specification at page 10 ¶ 026, page 11, ¶ 027. The processor is further configured to compare the product credit risk associated with the threshold value and approve the transaction based the comparison of the determined product credit risk with the threshold value. See e.g., Fig. 1, element 106, 108, specification at page 10 ¶ 026, page 11, ¶¶ 027 and 028.

Independent claim 65 recites a system for managing a financial transaction associated with a financial account, wherein the transaction would cause an outstanding balance of the financial account to exceed a credit limit. See e.g., specification at page 4, ¶ 014, page 5, ¶ 015, page 6, ¶ 017, page 7, ¶ 020. The system includes means for determining a type of product associated with the transaction. See e.g., Fig. 1, element

106, 108, specification at page 10 ¶ 026, page 11, ¶ 027. The system further includes means for determining a credit risk associated with the transaction based on the determined type of product associated with the transaction. See e.g., Fig. 1, element 106, 108, Figs. 3, 4, specification at page 10 ¶ 026, page 11, ¶ 027. The system further includes means for comparing the product credit risk associated with the threshold value. See e.g., Fig. 1, element 106, 108, Figs. 3, 4, specification at page 11, ¶¶ 027, 028. The system also includes means for approving the transaction based the comparison of the determined product credit risk with the threshold value. See e.g., Fig. 1, element 106, 108, Figs. 3, 4, specification at page 11, ¶¶ 027, 028.

Claim 66 depends from claim 65 and recites means for determining whether the product is associated with at least one of a consumer emergency and a consumer necessity (see e.g., Fig. 1, elements 106 and/or 108, Fig. 4, specification at page 10, ¶ 026) and means for allocating a low credit risk to the product when the product is determined to be associated with at least one of a consumer emergency and a consumer necessity (see e.g., Fig. 1, elements 106 and/or 108, Fig. 3, Fig. 4, specification at page 9, ¶ 022, page 10, ¶ 024, page 12, ¶ 029.)

**VI. GROUNDS OF REJECTION**

Claims 1-66 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,456,984 B1 to Demoff et al. ("*Demoff*") in view of Official Notice.

## VII. ARGUMENT

**A. The rejection of claims 1-66 as being unpatentable over Demoff in view of Official Notice should be reversed because the Examiner has not established a *prima facie* case of obviousness**

Appellants respectfully request that the Board to reverse the Examiner's rejection of claims 1-66 under 35 U.S.C. § 103(a) because the Examiner has not established a *prima facie* case of obviousness. To do so, the Examiner must demonstrate that the prior art reference (or references when combined) teach or suggest each and every the claim limitations. See M.P.E.P. § 2142, 8th Ed., Rev. 5 (August 2006). Moreover, "in formulating a rejection under 35 U.S.C. § 103(a) based upon a combination of prior art elements, it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed." USPTO Memorandum from Margaret A. Focarino, Deputy Commissioner for Patent Operations, May 3, 2007, page 2. Here, the Examiner's alleged combination of *Demoff* in view of Official Notice does not teach or suggest each and every recitation of claims 1-66.

**1. The rejection of independent claims 1, 21, and 41 is legally deficient and should be reversed because *Demoff* in view of Official Notice does not teach or suggest and the Examiner does not address each and every recitation of these claims.**

In rejecting independent claim 1, the Examiner asserts that *Demoff* discloses,

[a] method managing financial transactions (with transactions that exceed credit limits) comprising (see *Demoff* Abstract) :

[c]omparing

[a]pproving the transaction based on comparison (see *Demoff* , Figure 8, item 302).



(Final Office action at p. 2). The Examiner admits that *Demoff* fails to disclose “determining a merchant type.” (Final Office Action at p. 2.) To compensate for this deficiency, the Examiner takes Official Notice that such features are well known. *Id.* Further, in response to Appellants’ arguments that *Demoff* fails to disclose (and the Examiner did not address) “determining a merchant credit risk associated with the determined merchant type,” the Examiner references Figure 1, items 24 and 26 of *Demoff* to assert that “it is inherent that the merchant went through a risk assessment review” (Final Office action at p. 7). Appellants respectfully traverse the Examiner’s positions.

To begin with, as noted in the very portions cited by the Examiner, *Demoff* actually discloses “method and system” for “issuing credit as payment in a consumer transaction which eliminates the need for a traditional credit card while also minimizing any potential for fraud or theft.” (*Demoff*, Abstract.) The system disclosed by *Demoff* responds to a request for issuing a credit transaction number that is made concurrent with a particular transaction. *Id.* The Examiner alleges that *Demoff* discloses “comparing” without any further clarification. (Final Office action at p. 2). Indeed, the Examiner offers no evidence that the prior art teaches or suggests “comparing the merchant credit risk to a threshold value defining an acceptable credit risk and approving the transaction based on the comparison of the merchant credit risk with the threshold value,” as recited in claims 1, 21, and 41 (emphasis added). Nor does the cited art teach or suggest such features. For instance, Figure 1, items 24 and 26 of *Demoff* merely discloses a “registered vendor” (24) and an “unregistered vendor” (26). The reference does not show comparing a merchant credit risk to a threshold value, and

approving the transaction based on such a comparison, as recited in these claims.

Accordingly, for at least this reason the Board should reverse the rejection of claims 1, 21, and 41.

Further, rejection of claims 1, 21, and 41 is legally deficient because the Examiner failed to address this recitation of claims 1, 21, and 41, and point out where in the prior art such features are disclosed or suggested. 37 C.F.R. § 1.104(c) requires the Examiner to provide more than merely stating a reference meets the limitations of a rejected claim. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified." 37 C.F.R. § 1.104(c)(2). In this case, not only are the references asserted by the Examiner complex and describe many different embodiments, but also the Examiner improperly ignores recitations of independent claims 1, 21, and 41. As such, the Examiner's rejection of each of these claims under 35 U.S.C. § 103(a) does not meet the requirements of 37 C.F.R. § 1.104, and thus is improper.

Further, to establish *prima facie* obviousness under 35 U.S.C. § 103(a), the Examiner must show, *inter alia*, that the applied references, taken alone or in combination, teach or suggest each and every element recited in the claims. M.P.E.P. § 2143. Here, by ignoring the above noted recitations of claims 1, 21, and 41, the Examiner has failed to show how the cited art teach or suggest the recitations of these claims. As a result, the rejection of each of these claims do not meet the requirements of at least M.P.E.P. § 2143 and 35 U.S.C. § 103(a), and is thus legally deficient and

improper. Accordingly, for at least this additional reason the Board should reverse the rejection of claims 1, 21, and 41.

A similar problem exists with regard to “determining a merchant credit risk associated with the determined merchant type,” as recited in claims 1, 21, and 41. As noted above, in an attempt to address this feature, the Examiner relies upon Figure 1, items 24 and 26 of *Demoff* to assert that “it is inherent that the merchant went through a risk assessment review.” (Final Office action at p. 7). However, the Examiner’s argument does not address this recitation of claims 1, 21, and 41. Simply because *Demoff* performs a risk assessment review for a request for a credit number does not demonstrate in any fashion determining a merchant credit risk associated with the determined merchant type. Indeed, *Demoff* actually teaches away from such a feature. As disclosed in column 7, *Demoff* merely scrutinizes a vendor by determining whether the vendor is registered. However, regardless of whether the vendor is registered or not, the account is paid or a new credit number is generated for the transaction. (Fig. 8). Accordingly, one of ordinary skill in the art at the time of Appellants’ invention would have realized that there was no need for *Demoff* to perform a credit check of the vendor. And as to step 302 of Fig. 8, *Demoff* offers no suggestion that the vendor’s credit risk is analyzed. Therefore, for at least this additional reason the Board should reverse the rejection of claims 1, 21, and 41.

Additionally, as noted above, the Examiner admits that *Demoff* does not teach or suggest “determin[ed] merchant type.” (Final Office Action at p. 2). To compensate for this shortcoming, the Examiner improperly takes Official Notice, asserting that such a feature is “well known in the art” in the form of “credit fraud shut-off business practices”

and further asserted that it would have been obvious to one of ordinary skill in the art to make the alleged combination. (*Id.*) In particular, the Examiner asserted that "it is well known in the art at the time of the invention that credit card companies monitor, type & credit rate merchants." The Examiner further states, "[a]sk anyone and one of common knowledge in the art, they have probably either personally experienced or friend's credit card being blocked because of 'high risk' transactions they had been making" (Final Office action at pp. 7-8). Regardless, the Examiner's "official notice" does not address the recited element: "merchant credit risk associated with the determined merchant type. For the reasons set forth below in Section VII(4) regarding the deficiency of the Examiner's Official Notice, the Examiner's reliance on alleged personal knowledge is improper, and should not be considered by the Board as evidence in support of the Examiner's Official Notice. Accordingly, for at least the additional reasons set forth below in connection with the Examiner's Official Notice, the rejection of claims 1, 21, and 41 should be reversed and the claims allowed.

**2. The rejection of independent claims 61, 63, and 65 is legally deficient and should be reversed because *Demoff* in view of Official Notice does not teach or suggest and the Examiner does not address each and every recitation of these claims.**

The Examiner rejects claims 61, 63, and 65 for the same reasons in connection with claim 1. (Final Office Action at p. 7). However, by simply stating these claims are "similar to claim 1," the Examiner improperly ignores recitations of claims 61, 63, and 65. Consequently, the Examiner has failed to establish a *prima facie* case of obviousness in rejecting these claims.

For instance, claims 61, 63, and 65, although of different scope, each recite “determining a type of product associated with the transaction.” The Examiner does not address, and *Demoff* does not teach or suggest, such features. Nor does the Examiner address, and the cited art disclose, “determining a credit risk associated with the transaction based on the determined type of product associated with the transaction,” as recited in these claims. Similarly, the Examiner does not address or show where the prior art teaches “comparing” and “approving,” as recited in claims 61, 63, and 65.

As noted above, it is improper for the Examiner to reject claims without demonstrating the pertinence of the prior art and explaining the basis of the rejection. 37 C.F.R. § 1.104(c). Further, by ignoring the above noted recitations of claims 61, 63, and 65, the Examiner has again failed to show how the cited art teach or suggest the recitations of these claims. As a result, the rejection of each of these claims do not meet the requirements of at least M.P.E.P. § 2143 and 35 U.S.C. § 103(a), and is thus legally deficient and improper. For at least this reason, the Board should reverse the rejection of these claims and allow the claims.

3. **The rejection of dependent claims 2-20, 22-40, 42-60, 62, 64, and 66 is legally deficient and should be reversed because *Demoff* in view of Official Notice does not teach or suggest and/or the Examiner does not address each and every recitation of these claims.**

- a) **Claims 2, 22, and 42**

The Examiner asserts the request for issuance of a credit transaction number as disclosed by *Demoff* teaches the recitations of claim 2. (Final Office Action at p. 3.) The Examiner’s assertion, however, does not demonstrate how *Demoff* discloses “determining whether to contact a party to the transaction to obtain information”

concerning the transaction for use in determining a credit risk associated with the transaction," as recited in claim 2 (emphasis added). Indeed, the request for issuance of a credit transaction number is not such a feature. Accordingly, the rejection of claim 2 is legally deficient under 37 C.F.R. § 1.104(c), M.P.E.P. § 2143 and 35 U.S.C. § 103(a). Consequently, the Board should reverse the rejection and allow the claim.

The Examiner purportedly rejects claims 22 and 42 for the same reasons set forth in connection with claim 2. Accordingly, for at least the same reasons set forth above in connection with claim 2, the rejection of claims 22 and 42 is legally deficient, and the Board should reverse the rejection and allow the claims.

**b) Claims 3, 23, and 43**

The Examiner asserts the Examiner's Official Notice suggests the recitations of claim 3. (Final Office Action at p. 3.) The "credit fraud shut off business practice" allegedly known to the Examiner, however, does not demonstrate "determining whether the potential transaction is an emergency transaction" and "approving the potential transaction when the contacted party indicates that the transaction is an emergency transaction," as recited in claim 3. Indeed, nowhere does the Examiner's basis for Official Notice provide evidence of such features. Moreover, the rejection of claim 3 under 35 U.S.C. § 103(a) is legally deficient because the Examiner does not provide any motivation, reason, and suggestion to combine the teachings of *Demoff* with the alleged Official Notice teachings to suggest the features of claim 3. Thus, the Examiner has not established a *prima facie* case of obviousness in rejecting this claim. Accordingly, the rejection of claim 3 is legally deficient under 37 C.F.R. § 1.104(c),

M.P.E.P. § 2143 and 35 U.S.C. § 103(a). Consequently, the Board should reverse the rejection and allow the claim.

The Examiner purportedly rejects claims 23 and 43 for the same reasons set forth in connection with claim 3. Accordingly, for at least the same reasons set forth above in connection with claim 3, the rejection of claims 23 and 43 is legally deficient, and the Board should reverse the rejection and allow the claims.

**c) Claims 4, 24, and 44**

The Examiner asserts the Examiner's Official Notice suggests the recitations of claim 4. (Final Office Action at p. 3.) The "credit fraud shut off business practice" allegedly known to the Examiner, however, does not demonstrate "approving the potential transaction based on a determination that declining the potential transaction would cause inconvenience to a holder of the financial account" as recited in claim 4. Indeed, nowhere does the Examiner's basis for Official Notice provide evidence of such features. Moreover, the rejection of claim 4 under 35 U.S.C. § 103(a) is legally deficient because the Examiner does not provide any motivation, reason, and suggestion to combine the teachings of *Demoff* with the alleged Official Notice teachings to suggest the features of claim 4. Thus, the Examiner has not established a *prima facie* case of obviousness in rejecting this claim. Accordingly, the rejection of claim 4 is legally deficient under 37 C.F.R. § 1.104(c), M.P.E.P. § 2143 and 35 U.S.C. § 103(a). Consequently, the Board should reverse the rejection and allow the claim.

The Examiner purportedly rejects claims 24 and 44 for the same reasons set forth in connection with claim 4. Accordingly, for at least the same reasons set forth

above in connection with claim 3, the rejection of claims 24 and 44 is legally deficient, and the Board should reverse the rejection and allow the claims.

**d) Claims 5, 25, and 45**

The Examiner asserts step 302 as disclosed in Fig. 8 of *Demoff* teaches the recitations of claim 5. (Final Office Action at p. 4.) The Examiner's assertion, however, does not demonstrate how *Demoff* discloses "allowing a credit analyst to determine whether to approve the potential transaction when the credit analyst is available," as recited in claim 5. Indeed, approving a request for issuance of a credit transaction number does not show the step of determining whether to contact a party by allowing a credit analyst to determine whether to approve the potential transaction when available. Accordingly, the rejection of claim 5 is legally deficient under 37 C.F.R. § 1.104(c), M.P.E.P. § 2143 and 35 U.S.C. § 103(a). Consequently, the Board should reverse the rejection and allow the claim.

The Examiner purportedly rejects claims 25 and 45 for the same reasons set forth in connection with claim 5. Accordingly, for at least the same reasons set forth above in connection with claim 5, the rejection of claims 25 and 45 is legally deficient, and the Board should reverse the rejection and allow the claims.

**e) Claims 6, 26, and 46**

The Examiner is also incorrect in asserting the request for issuance of a transaction number disclosed by *Demoff* teaches the recitations of claim 6. (Final Office Action at p. 4.) As described by *Demoff*, the request "includes information regarding the transaction such as purchase amount, date and time of purchase, customer identification, and vendor identification." (*Demoff* at 7:13-16.) None of these



characteristics show a type of product, much less determining a type of product associated with the transaction, as recited in claim 6. Nor does step 302 of Fig. 8 disclose the determining, comparing and approving steps of this claim. Accordingly, the rejection of claim 6 is legally deficient under M.P.E.P. § 2143 and 35 U.S.C. § 103(a). Consequently, the Board should reverse the rejection and allow the claim.

The Examiner purportedly rejects claims 26 and 46 for the same reasons set forth in connection with claim 6. Accordingly, for at least the same reasons set forth above in connection with claim 6, the rejection of claims 26 and 46 is legally deficient, and the Board should reverse the rejection and allow the claims.

**f) Claims 7, 27, and 47**

The Examiner asserts the Examiner's Official Notice suggests the recitations of claim 7. (Final Office Action at p. 4.) The "credit fraud shut off business practice" allegedly known to the Examiner, however, does not demonstrate "determining whether the product is associated with at least one of a consumer emergency and a consumer necessity" and "allocating a low credit risk to the product when the product is determined to be associated with at least one of a consumer emergency and a consumer necessity," as recited in claim 7. Moreover, the rejection of claim 7 under 35 U.S.C. § 103(a) is legally deficient because the Examiner does not provide any motivation, reason, and suggestion to combine the teachings of *Demoff* with the alleged Official Notice teachings to suggest the features of claim 7. Thus, the Examiner has not established a *prima facie* case of obviousness in rejecting this claim. Accordingly, the rejection of claim 7 is legally deficient under 37 C.F.R. § 1.104(c), M.P.E.P. § 2143 and

35 U.S.C. § 103(a). Consequently, the Board should reverse the rejection and allow the claim.

The Examiner purportedly rejects claims 27 and 47 for the same reasons set forth in connection with claim 7. Accordingly, for at least the same reasons set forth above in connection with claim 7, the rejection of claims 27 and 47 is legally deficient, and the Board should reverse the rejection and allow the claims.

**g) Claims 8, 28, and 48**

The Examiner asserts the Examiner's Official Notice suggests the recitations of claim 8. (Final Office Action at p. 4.) The "credit fraud shut off business practice" allegedly known to the Examiner, however, does not demonstrate "determining a low merchant credit risk for merchant types corresponding to at least one of a restaurant, a grocery store, and a fuel dispenser," as recited in claim 8. Moreover, the rejection of claim 8 under 35 U.S.C. § 103(a) is legally deficient because the Examiner does not provide any motivation, reason, and suggestion to combine the teachings of *Demoff* with the alleged Official Notice teachings to suggest the features of claim 8. Thus, the Examiner has not established a *prima facie* case of obviousness in rejecting this claim. Accordingly, the rejection of claim 8 is legally deficient under 37 C.F.R. § 1.104(c), M.P.E.P. § 2143 and 35 U.S.C. § 103(a). Consequently, the Board should reverse the rejection and allow the claim.

The Examiner purportedly rejects claims 28 and 48 for the same reasons set forth in connection with claim 8. Accordingly, for at least the same reasons set forth above in connection with claim 8, the rejection of claims 28 and 48 is legally deficient, and the Board should reverse the rejection and allow the claims.

**h) Claims 9, 29, and 49**

The Examiner asserts the Examiner's Official Notice suggests the recitations of claim 9. (Final Office Action at p. 5.) The "credit fraud shut off business practice" allegedly known to the Examiner, however, does not demonstrate "determining a low merchant credit risk for merchant types corresponding to merchants associated with a historically low occurrence of fraud," as recited in claim 9. Moreover, the rejection of claim 9 under 35 U.S.C. § 103(a) is legally deficient because the Examiner does not provide any motivation, reason, and suggestion to combine the teachings of *Demoff* with the alleged Official Notice teachings to suggest the features of claim 9. Thus, the Examiner has not established a *prima facie* case of obviousness in rejecting this claim. Accordingly, the rejection of claim 9 is legally deficient under 37 C.F.R. § 1.104(c), M.P.E.P. § 2143 and 35 U.S.C. § 103(a). Consequently, the Board should reverse the rejection and allow the claim.

The Examiner purportedly rejects claims 29 and 49 for the same reasons set forth in connection with claim 9. Accordingly, for at least the same reasons set forth above in connection with claim 9, the rejection of claims 29 and 49 is legally deficient, and the Board should reverse the rejection and allow the claims.

**i) Claims 10, 30, and 50**

The Examiner asserts the Examiner's Official Notice suggests the recitations of claim 10. (Final Office Action at p. 5.) The "credit fraud shut off business practice" allegedly known to the Examiner, however, does not demonstrate "determining a low merchant credit risk for merchant types corresponding to merchants offering products deemed to be of an essential nature to a consumer," as recited in claim 10. Moreover,

the rejection of claim 10 under 35 U.S.C. § 103(a) is legally deficient because the Examiner does not provide any motivation, reason, and suggestion to combine the teachings of *Demoff* with the alleged Official Notice teachings to suggest the features of claim 10. Thus, the Examiner has not established a *prima facie* case of obviousness in rejecting this claim. Accordingly, the rejection of claim 10 is legally deficient under 37 C.F.R. § 1.104(c), M.P.E.P. § 2143 and 35 U.S.C. § 103(a). Consequently, the Board should reverse the rejection and allow the claim.

The Examiner purportedly rejects claims 30 and 50 for the same reasons set forth in connection with claim 10. Accordingly, for at least the same reasons set forth above in connection with claim 10, the rejection of claims 30 and 50 is legally deficient, and the Board should reverse the rejection and allow the claims.

**j) Claims 11, 31, and 51**

The Examiner asserts the Examiner's Official Notice suggests the recitations of claim 11. (Final Office Action at p. 5.) The "credit fraud shut off business practice" allegedly known to the Examiner, however, does not demonstrate "determining a high merchant credit risk for merchant types corresponding to at least one of mail order merchants, telephone order merchants, and Internet order merchants," as recited in claim 11. Moreover, the rejection of claim 11 under 35 U.S.C. § 103(a) is legally deficient because the Examiner does not provide any motivation, reason, and suggestion to combine the teachings of *Demoff* with the alleged Official Notice teachings to suggest the features of claim 11. Thus, the Examiner has not established a *prima facie* case of obviousness in rejecting this claim. Accordingly, the rejection of

claim 11 is legally deficient under 37 C.F.R. § 1.104(c), M.P.E.P. § 2143 and 35 U.S.C. § 103(a). Consequently, the Board should reverse the rejection and allow the claim.

The Examiner purportedly rejects claims 31 and 51 for the same reasons set forth in connection with claim 11. Accordingly, for at least the same reasons set forth above in connection with claim 11, the rejection of claims 31 and 51 is legally deficient, and the Board should reverse the rejection and allow the claims.

**k) Claims 12, 32, and 52**

The Examiner asserts the Examiner's Official Notice suggests the recitations of claim 12. (Final Office Action at p. 5.) The "credit fraud shut off business practice" allegedly known to the Examiner, however, does not demonstrate "determining a high merchant credit risk for merchant types corresponding to merchants associated with a historically high occurrence of fraud," as recited in claim 12. Moreover, the rejection of claim 12 under 35 U.S.C. § 103(a) is legally deficient because the Examiner does not provide any motivation, reason, and suggestion to combine the teachings of *Demoff* with the alleged Official Notice teachings to suggest the features of claim 12. Thus, the Examiner has not established a *prima facie* case of obviousness in rejecting this claim. Accordingly, the rejection of claim 12 is legally deficient under 37 C.F.R. § 1.104(c), M.P.E.P. § 2143 and 35 U.S.C. § 103(a). Consequently, the Board should reverse the rejection and allow the claim.

The Examiner purportedly rejects claims 32 and 52 for the same reasons set forth in connection with claim 12. Accordingly, for at least the same reasons set forth above in connection with claim 12, the rejection of claims 32 and 52 is legally deficient, and the Board should reverse the rejection and allow the claims.

**l) Claims 13, 33, and 53**

The Examiner is incorrect in asserting the request for issuance of a transaction number disclosed by *Demoff* teaches the recitations of claim 13. (Final Office Action at p. 5.) As described by *Demoff*, the request "includes information regarding the transaction such as purchase amount, date and time of purchase, customer identification, and vendor identification." (*Demoff* at 7:13-16.) None of these characteristics show approving the potential transaction by increasing the credit limit by an amount equal to at least a value associated with the transaction, as recited in claim 13. Indeed, the request is not an approval of the issuance request. Accordingly, the rejection of claim 13 is legally deficient under M.P.E.P. § 2143 and 35 U.S.C. § 103(a). Consequently, the Board should reverse the rejection and allow the claim.

The Examiner purportedly rejects claims 33 and 53 for the same reasons set forth in connection with claim 13. Accordingly, for at least the same reasons set forth above in connection with claim 13, the rejection of claims 33 and 53 is legally deficient, and the Board should reverse the rejection and allow the claims.

**m) Claims 14, 15, 34, 35, 54, and 55**

Claims 14 and 15 depend from claim 1. Claims 34 and 35 depend from claim 21. Claims 54 and 55 depend from claim 41. As explained, the rejection of claims 1, 21, and 41 is legally deficient. Accordingly, for at least the same reasons set forth above in connection with claims 1, 21, and 41, the rejection of claims 14, 15, 34, 35, 54, and 55 is also legally deficient, and should be reversed by the Board and the claims allowed.

**n) Claims 16, 36, and 56**

The Examiner is incorrect in asserting *Demoff* teaches the recitations of claim 16. (Final Office Action at p. 6.) Indeed, *Demoff* teaches away from such recitations. "It is therefore an object of the present invention to provide a system and method for issuing credit in a consumer transaction which eliminates the need for the consumer to carry a credit card." (*Demoff* at 1: 53-57.) Accordingly, the rejection of claim 16 is legally deficient under M.P.E.P. § 2143 and 35 U.S.C. § 103(a). Consequently, the Board should reverse the rejection and allow the claim.

The Examiner purportedly rejects claims 36 and 56 for the same reasons set forth in connection with claim 16. Accordingly, for at least the same reasons set forth above in connection with claim 16, the rejection of claims 36 and 56 is legally deficient, and the Board should reverse the rejection and allow the claims.

**o) Claims 17, 37, and 57**

The Examiner is incorrect in asserting the request approval process disclosed by *Demoff* teaches the recitations of claim 17. (Final Office Action at p. 6.) As described by *Demoff*, the process merely determines whether the request is approved, but provides no specifics of reasons for a disapproval. (*Demoff* at 7:18-19.) Accordingly, the rejection of claim 17 is legally deficient under M.P.E.P. § 2143 and 35 U.S.C. § 103(a). Consequently, the Board should reverse the rejection and allow the claim.

The Examiner purportedly rejects claims 37 and 57 for the same reasons set forth in connection with claim 17. Accordingly, for at least the same reasons set forth above in connection with claim 17, the rejection of claims 37 and 57 is legally deficient, and the Board should reverse the rejection and allow the claims.

**p) Claims 18, 38, and 58**

The Examiner asserts the Examiner's Official Notice suggests the recitations of claim 18. (Final Office Action at p. 6.) The "credit fraud shut off business practice" allegedly known to the Examiner, however, does not demonstrate "adjusting the merchant credit risk based on a time of day the transaction is requested," as recited in claim 18. Moreover, the rejection of claim 18 under 35 U.S.C. § 103(a) is legally deficient because the Examiner does not provide any motivation, reason, and suggestion to combine the teachings of *Demoff* with the alleged Official Notice teachings to suggest the features of claim 18. Thus, the Examiner has not established a *prima facie* case of obviousness in rejecting this claim. Accordingly, the rejection of claim 18 is legally deficient under 37 C.F.R. § 1.104(c), M.P.E.P. § 2143 and 35 U.S.C. § 103(a). Consequently, the Board should reverse the rejection and allow the claim.

The Examiner purportedly rejects claims 38 and 58 for the same reasons set forth in connection with claim 18. Accordingly, for at least the same reasons set forth above in connection with claim 18, the rejection of claims 38 and 58 is legally deficient, and the Board should reverse the rejection and allow the claims.

**q) Claims 19, 39, and 59**

The Examiner asserts the Examiner's Official Notice suggests the recitations of claim 19. (Final Office Action at p. 6.) The "credit fraud shut off business practice" allegedly known to the Examiner, however, does not demonstrate "adjusting the merchant credit risk based on the medium in which the customer is making the transaction," as recited in claim 19. Moreover, the rejection of claim 19 under 35 U.S.C. § 103(a) is legally deficient because the Examiner does not provide any motivation,



reason, and suggestion to combine the teachings of *Demoff* with the alleged Official Notice teachings to suggest the features of claim 19. Thus, the Examiner has not established a *prima facie* case of obviousness in rejecting this claim. Accordingly, the rejection of claim 19 is legally deficient under 37 C.F.R. § 1.104(c), M.P.E.P. § 2143 and 35 U.S.C. § 103(a). Consequently, the Board should reverse the rejection and allow the claim.

The Examiner purportedly rejects claims 39 and 59 for the same reasons set forth in connection with claim 19. Accordingly, for at least the same reasons set forth above in connection with claim 19, the rejection of claims 39 and 59 is legally deficient, and the Board should reverse the rejection and allow the claims.

**r) Claims 20, 40, and 60**

The Examiner asserts the Examiner's Official Notice suggests the recitations of claim 20. (Final Office Action at p. 6.) The "credit fraud shut off business practice" allegedly known to the Examiner, however, does not demonstrate "adjusting the merchant credit risk based on an account history of the customer making the transaction," as recited in claim 20. Moreover, the rejection of claim 20 under 35 U.S.C. § 103(a) is legally deficient because the Examiner does not provide any motivation, reason, and suggestion to combine the teachings of *Demoff* with the alleged Official Notice teachings to suggest the features of claim 20. Thus, the Examiner has not established a *prima facie* case of obviousness in rejecting this claim. Accordingly, the rejection of claim 20 is legally deficient under 37 C.F.R. § 1.104(c), M.P.E.P. § 2143 and 35 U.S.C. § 103(a). Consequently, the Board should reverse the rejection and allow the claim.

The Examiner purportedly rejects claims 40 and 60 for the same reasons set forth in connection with claim 20. Accordingly, for at least the same reasons set forth above in connection with claim 20, the rejection of claims 40 and 60 is legally deficient, and the Board should reverse the rejection and allow the claims.

**s) Claims 62, 64, and 66**

The Examiner rejects claims 62, 64, and 66 for the same reasons set forth in connection with claim 7. (Final Office Action at p. 7.) Accordingly, for at least the same reasons set forth above in connection with claim 7, the rejection of claims 62, 64, and 66 is legally deficient, and the Board should reverse the rejection and allow the claims.

**4. The rejection of independent claims 1-66 is further legally deficient and should be reversed because the Examiner improperly takes Official Notice.**

In rejecting claim 1, the Examiner admits that *Demoff* does not teach or suggest “determining merchant type.” (Final Office Action at p. 2). To compensate for this shortcoming, the Examiner improperly takes Official Notice, asserting that such a feature is “well known in the art” in the form of “credit fraud shut-off business practices” and further asserted that it would have been obvious to one of ordinary skill in the art to make the alleged combination. (*Id.*) In particular, the Examiner asserted that “‘it is well known in the art at the time of the invention’ that credit card companies monitor, type & credit rate merchants.” The Examiner further states, “[a]sk anyone and one of common knowledge in the art, they have probably either personally experienced or friend’s credit card being blocked because of ‘high risk’ transactions they had been making” (Final Office action at pp. 7-8). In rejecting dependent claims 3, 4, 7-12, 14, 15, 18, 19, 20, the Examiner asserts “Official Notice discloses” the recitations of each of these claims.

(Final Office Action at pp. 3-6.) The Examiner also rejects claims 21-66 for the same reasons set forth in connection with claims 1-20. (Final Office Action, pp. 6-7.) In response to Appellants traversal of the Examiner's Official Notice, the Examiner offered a "affidavit" of "her own personal experiences of this common practice." (Final Office Action at 8.) However, as explained below, the alleged "affidavit" is merely a statement of no consequences, not supported by evidence, and does not address the claim recitations that the Examiner asserts is supported by the "affidavit." In this regard, the Board should not consider the Examiners' statement in support of the alleged Official Notice.

- a) **The Examiner's statement is not supported by any factual evidence or demonstrates personal knowledge of certain features relied upon by the Examiner to reject claims 1-66**

While Examiner's Apple and Daas state they had certain experiences with credit card companies more than one year prior to the filing date of Appellants' invention, they provide no evidence to support their assertions. For example, neither Examiner identifies the credit card company that blocked their credit cards because the merchants were "foreign" and "high credit risk." Such information appears to be important for purposes of locating documentation in connection with such processes. Nor do the Examiners identify what type of electronic stores were considered "high risk" by an unidentified credit card company. Moreover, according to the Examiners, the experiences disclosed in their statement occurred over six years ago. Given this period of time, Appellants submit that additional factual evidence should be provided to support the Examiners' statements. In short, the statement offers no corroboration to support

the assertions made. An Official Notice rejection is improper unless the facts asserted are well-known or common knowledge in the art, and capable of instant and unquestionable demonstration as being well-known. See M.P.E.P. § 2144.03, the procedures set forth in the Memorandum by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy dated February 21, 2002, and the precedents provided in *Dickinson v. Zurko*, 527 U.S. 150, 50 U.S.P.Q.2d 1930 (1999) and *In re Ahlert*, 424 F.2d 1088, 1091, 165 U.S.P.Q. 418, 420 (CCPA 1970). Further, any facts asserted as well-known should serve only to "fill in the gaps" in an insubstantial manner. It is never appropriate to rely solely on "common knowledge." The Federal Circuit has "criticized the USPTO's reliance on 'basic knowledge' or 'common sense' to support an obviousness rejection, where there was no evidentiary support in the record for such a finding." *Id.*

Here, each of Examiners Apple and Daas describes situations in which a credit card was "blocked." However, their statement fails to comply with the requirement that the Examiners had personal knowledge as to the "merchants being typed," as required under 37 C.F.R. 1.104(d)(2)<sup>1</sup>. Appellants respectfully submit that having a credit card "blocked" due to alleged use overseas or due to purchasing alleged "high price electronics" does not by itself establish personal knowledge that the credit card companies were "determining a merchant type." For at least this additional reason,

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<sup>1</sup> When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of the applicant and other persons.

Appellants request that the Board not consider the Examiners' statement as evidence in support of the Examiner's Official Notice.

**b) The Examiners' statement does not address the recitations of each claim that the Examiner rejects based on the statement**

According to the Examiners' statement, a "credit card was blocked ... because they 'typed' the merchants as foreign and high risk." The affidavit also states that upon purchasing "a new laptop (sic), printer and a few other high priced electronics ... the credit card company once again blocked" the credit card "because of the high dollar spending at the high risk 'typed' electronic stores." These statements, however, do not support the rejection of the claims as asserted by the Examiner.

For instance, as explained above, nowhere does the Examiners' statement establish personal knowledge of:

determining a merchant type for a merchant which is a party to the transaction and determining a merchant credit risk associated with the determined merchant type, as recited in claims 1, 21, 41<sup>2</sup>

determining whether the potential transaction is an emergency transaction and providing the transaction when the contacted party indicates that it is, as recited in claims 3, 23, 43;

approving the potential transaction based on a determination that declining the potential transaction would cause inconvenience to a holder of the financial account, as recited in claims 4, 24, 44;

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<sup>2</sup> Indeed, the Examiners' statement does not establish personal knowledge of a processor configured to determine a merchant type and merchant credit risk, as recited in claim 21 or any type of means for determining, as recited in claim 41.

determining whether the product is associated with at least one of a consumer emergency and a consumer necessity and allocating a low credit risk to the product when the product is determined to be associated with at least one of a consumer emergency and a consumer necessity, as recited in claims 7, 27, 47;

determining a low merchant credit risk for merchant types corresponding to at least one of a restaurant, a grocery store, and a fuel dispenser, as recited in claims 8, 28, 48;

determining a low merchant credit risk for merchant types corresponding to merchants associated with a historically low occurrence of fraud, as recited in claims 9, 29, 49;

determining a low merchant credit risk for merchant types corresponding to merchants offering products deemed to be of an essential nature to a consumer, as recited in claims 10, 30, 50;

determining a high merchant credit risk for merchant types corresponding to at least one of mail order merchants, telephone order merchants, and Internet order merchants, as recited in claims 11, 31, 51;

determining a high merchant credit risk for merchant types corresponding to merchants associated with a historically high occurrence of fraud, as recited in claims 12, 32, 52;

adjusting the merchant credit risk based on a time of day the transaction is requested, as recited in claims 18, 38, 58;

adjusting the merchant credit risk based on the medium in which the customer is making the transaction, as recited in claims 19, 39, 59;

adjusting the merchant credit risk based on an account history of the customer making the transaction, as recited in claims 20, 40, 60; and

determining a type of product associated with the transaction, determining a credit risk associated with the transaction

based on the determined type of product, comparing and approving, as recited in claim 61, 63, and 65.<sup>3</sup>

Accordingly, the Examiners' statement cannot be relied upon to support the Examiner's assertion of Official Notice as to at least these claims. For at least this additional reason, Appellants request that the Board not consider the Examiners' statement as evidence in support of the Examiner's Official Notice.

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<sup>3</sup> The Examiner rejects claims 61, 63, and 65 for the same reasons set forth in connection with claims 1. (Final Office Action at p. 7.)

### VIII. CONCLUSION

For the reasons set forth above, pending claims 1-66 are allowable and reversal of the Examiner's rejection is respectfully requested.

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Appeal Brief, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: August 2, 2007

By: 

Joseph E. Palys  
Reg. No. 46,508



**IX. CLAIMS APPENDIX**

1. A method for managing a financial transaction associated with a financial account, wherein the transaction would cause an outstanding balance of the financial account to exceed a credit limit, the method comprising:

determining a merchant type for a merchant which is a party to the transaction;  
determining a merchant credit risk associated with the determined merchant type;  
comparing the merchant credit risk to a threshold value defining an acceptable credit risk; and

approving the transaction based on the comparison of the merchant credit risk with the threshold value.

2. The method of claim 1, further comprising the step of:

determining whether to contact a party to the transaction to obtain information concerning the transaction for use in determining a credit risk associated with the transaction.

3. The method of claim 2, wherein the step of determining whether to contact a party to the transaction further comprises:

determining whether the potential transaction is an emergency transaction; and  
approving the potential transaction when the contacted party indicates that the transaction is an emergency transaction.

4. The method of claim 1, further comprising:

approving the potential transaction based on a determination that declining the potential transaction would cause inconvenience to a holder of the financial account.

5. The method of claim 2, wherein the step of determining whether to contact a party to the transaction further comprises:

allowing a credit analyst to determine whether to approve the potential transaction when the credit analyst is available.

6. The method of claim 1, further comprising:

determining a type of product associated with the transaction;

determining a credit risk associated with the transaction based on the determined type of product associated with the transaction;

comparing the product credit risk associated with the threshold value; and

approving the transaction based the comparison of the determined product credit risk with the threshold value.

7. The method of claim 6, wherein determining the credit risk associated with the transaction further comprises:

determining whether the product is associated with at least one of a consumer emergency and a consumer necessity; and

allocating a low credit risk to the product when the product is determined to be associated with at least one of a consumer emergency and a consumer necessity.

8. The method of claim 1, wherein the step of determining a merchant credit risk further comprises:

determining a low merchant credit risk for merchant types corresponding to at least one of a restaurant, a grocery store, and a fuel dispenser.

9. The method of claim 1, wherein the step of determining a merchant credit risk further comprises:

determining a low merchant credit risk for merchant types corresponding to merchants associated with a historically low occurrence of fraud.

10. The method of claim 1, wherein the step of determining a merchant credit risk further comprises:

determining a low merchant credit risk for merchant types corresponding to merchants offering products deemed to be of an essential nature to a consumer.

11. The method of claim 1, wherein the step of determining a merchant credit risk further comprises:

determining a high merchant credit risk for merchant types corresponding to at least one of mail order merchants, telephone order merchants, and Internet order merchants.

12. The method of claim 1, wherein the step of determining a merchant credit risk further comprises:

determining a high merchant credit risk for merchant types corresponding to merchants associated with a historically high occurrence of fraud.

13. The method of claim 1, wherein the step of approving the potential transaction further comprises:

increasing the credit limit by an amount equal to at least a value associated with the transaction.

14. The method of claim 1, wherein the credit limit is known to the holder of the financial account.

15. The method of claim 1, wherein the credit limit is unknown to the holder of the financial account.

16. The method of claim 1, wherein the financial account is a credit card account.

17. The method of claim 1, further comprising:  
declining the potential transaction if the potential transaction plus the outstanding balance exceeds the credit limit by a predetermined amount.

18. The method of claim 1, further comprising:  
adjusting the merchant credit risk based on a time of day the transaction is requested.

19. The method of claim 1, further comprising:  
adjusting the merchant credit risk based on the medium in which the customer is making the transaction.

20. The method of claim 1, further comprising:  
adjusting the merchant credit risk based on an account history of the customer making the transaction.

21. A computer for managing a financial transaction associated with a financial account, wherein the transaction would cause an outstanding balance of the financial account to exceed a credit limit, the computer comprising:

- a memory having programming instructions; and
- a processor, responsive to the programming instructions, configured to:
  - determine a merchant type for a merchant which is a party to the transaction;
  - determine a merchant credit risk associated with the determined merchant type;
  - compare the merchant credit risk to a threshold value defining an acceptable credit risk; and
  - approve the transaction based on the comparison of the merchant credit risk with the threshold value.

22. The computer of claim 21, wherein the processor is further configured to:

- determine whether to contact a party to the transaction to obtain information concerning the transaction for use in determining a credit risk associated with the transaction.

23. The computer of claim 22, wherein determining whether to contact a party to the transaction further includes:

- determining whether the potential transaction is an emergency transaction; and
- approving the potential transaction when the contacted party indicates that the transaction is an emergency transaction.

24. The computer of claim 21, wherein the processor is further configured to:  
approve the potential transaction based on a determination that declining the  
potential transaction would cause inconvenience to a holder of the financial account.

25. The computer of claim 22, wherein determining whether to contact a party  
to the transaction further includes:

allowing a credit analyst to determine whether to approve the potential  
transaction when the credit analyst is available.

26. The computer of claim 21, wherein the processor is further configured to:  
determine a type of product associated with the transaction;  
determine a credit risk associated with the transaction based on the determined  
type of product associated with the transaction;  
compare the product credit risk associated with the threshold value; and  
approve the transaction based the comparison of the determined product credit  
risk with the threshold value.

27. The computer of claim 26, wherein determining the credit risk associated  
with the transaction further includes:

determining whether the product is associated with at least one of a consumer  
emergency and a consumer necessity; and

allocating a low credit risk to the product when the product is determined to be  
associated with at least one of a consumer emergency and a consumer necessity.

28. The computer of claim 21, wherein determining a merchant credit risk further includes:

determining a low merchant credit risk for merchant types corresponding to at least one of a restaurant, a grocery store, and a fuel dispenser.

29. The computer of claim 21, wherein determining a merchant credit risk further includes:

determining a low merchant credit risk for merchant types corresponding to merchants associated with a historically low occurrence of fraud.

30. The computer of claim 21, wherein determining a merchant credit risk further includes:

determining a low merchant credit risk for merchant types corresponding to merchants offering products deemed to be of an essential nature to a consumer.

31. The computer of claim 21, wherein determining a merchant credit risk further includes:

determining a high merchant credit risk for merchant types corresponding to at least one of mail order merchants, telephone order merchants, and Internet order merchants.

32. The computer of claim 21, wherein determining a merchant credit risk further includes:

determining a high merchant credit risk for merchant types corresponding to merchants associated with a historically high occurrence of fraud.

33. The computer of claim 21, wherein approving the potential transaction further includes:  
  
increasing the credit limit by an amount equal to at least a value associated with the transaction.

34. The computer of claim 21, wherein the credit limit is known to the holder of the financial account.

35. The computer of claim 21, wherein the credit limit is unknown to the holder of the financial account.

36. The computer of claim 21, wherein the financial account is a credit card account.

37. The computer of claim 21, wherein the processor is further configured to:  
  
decline the potential transaction if the potential transaction plus the outstanding balance exceeds the credit limit by a predetermined amount.

38. The computer of claim 21, wherein the processor is further configured to:  
  
adjust the merchant credit risk based on a time of day the transaction is requested.

39. The computer of claim 21, wherein the processor is further configured to:  
  
adjust the merchant credit risk based on the medium in which the customer is making the transaction.



40. The computer of claim 21, wherein the processor is further configured to:  
adjust the merchant credit risk based on an account history of the customer  
making the transaction.

41. An system for managing a financial transaction associated with a financial  
account, wherein the transaction would cause an outstanding balance of the financial  
account to exceed a credit limit, the system comprising:

means for determining a merchant type for a merchant which is a party to the  
transaction;

means for determining a merchant credit risk associated with the determined  
merchant type;

means for comparing the merchant credit risk to a threshold value defining an  
acceptable credit risk; and

means for approving the transaction based on the comparison of the merchant  
credit risk with the threshold value.

42. The system of claim 41, further comprising:

means for determining whether to contact a party to the transaction to obtain  
information concerning the transaction for use in determining a credit risk associated  
with the transaction.

43. The system of claim 42, wherein the means for determining whether to  
contact a party to the transaction further comprises:

means for determining whether the potential transaction is an emergency  
transaction; and

means for approving the potential transaction when the contacted party indicates that the transaction is an emergency transaction.

44. The system of claim 42, further comprising:

means for approving the potential transaction based on a determination that declining the potential transaction would cause inconvenience to a holder of the financial account.

45. The system of claim 42, wherein the means for determining whether to contact a party to the transaction further comprises:

means for allowing a credit analyst to determine whether to approve the potential transaction when the credit analyst is available.

46. The system of claim 41, further comprising:

means for determining a type of product associated with the transaction;

means for determining a credit risk associated with the transaction based on the determined type of product associated with the transaction;

means for comparing the product credit risk associated with the threshold value;  
and

means for approving the transaction based the comparison of the determined product credit risk with the threshold value.

47. The system of claim 46, wherein the means for determining the credit risk associated with the transaction further comprises:

means for determining whether the product is associated with at least one of a consumer emergency and a consumer necessity; and

means for allocating a low credit risk to the product when the product is determined to be associated with at least one of a consumer emergency and a consumer necessity.

48. The system of claim 41, wherein the means for determining a merchant credit risk further comprises:

means for determining a low merchant credit risk for merchant types corresponding to at least one of a restaurant, a grocery store, and a fuel dispenser.

49. The system of claim 41, wherein the means for determining a merchant credit risk further comprises:

means for determining a low merchant credit risk for merchant types corresponding to merchants associated with a historically low occurrence of fraud.

50. The system of claim 41, wherein the means for determining a merchant credit risk further comprises:

means for determining a low merchant credit risk for merchant types corresponding to merchants offering products deemed to be of an essential nature to a consumer.

51. The system of claim 41, wherein the means for determining a merchant credit risk further comprises:

means for determining a high merchant credit risk for merchant types corresponding to at least one of mail order merchants, telephone order merchants, and Internet order merchants.

52. The system of claim 41, wherein the means for determining a merchant credit risk further comprises:

means for determining a high merchant credit risk for merchant types corresponding to merchants associated with a historically high occurrence of fraud.

53. The system of claim 41, wherein the means for approving the potential transaction further comprises:

means for increasing the credit limit by an amount equal to at least a value associated with the transaction.

54. The system of claim 41, wherein the credit limit is known to the holder of the financial account.

55. The system of claim 41, wherein the credit limit is unknown to the holder of the financial account.

56. The system of claim 41, wherein the financial account is a credit card account.

57. The system of claim 41, further comprising:  
means for declining the potential transaction if the potential transaction plus the outstanding balance exceeds the credit limit by a predetermined amount.

58. The system of claim 41, further comprising:  
means for adjusting the merchant credit risk based on a time of day the transaction is requested.
59. The system of claim 41, further comprising:  
means for adjusting the merchant credit risk based on the medium in which the customer is making the transaction.
60. The system of claim 41, further comprising:  
means for adjusting the merchant credit risk based on an account history of the customer making the transaction.
61. A method for managing a financial transaction associated with a financial account, wherein the transaction would cause an outstanding balance of the financial account to exceed a credit limit, the method comprising:  
determining a type of product associated with the transaction;  
determining a credit risk associated with the transaction based on the determined type of product associated with the transaction;  
comparing the product credit risk associated with the threshold value; and  
approving the transaction based the comparison of the determined product credit risk with the threshold value.
62. The method of claim 61, wherein determining the credit risk associated with the transaction further comprises:

determining whether the product is associated with at least one of a consumer emergency and a consumer necessity; and

allocating a low credit risk to the product when the product is determined to be associated with at least one of a consumer emergency and a consumer necessity.

63. A computer for managing a financial transaction associated with a financial account, wherein the transaction would cause an outstanding balance of the financial account to exceed a credit limit, the computer comprising:

a memory having programming instructions; and

a processor, responsive to the programming instructions, configured to:

determine a type of product associated with the transaction;

determine a credit risk associated with the transaction based on the determined type of product associated with the transaction;

compare the product credit risk associated with the threshold value; and

approve the transaction based the comparison of the determined product credit risk with the threshold value.

64. The computer of claim 63, wherein determining the credit-risk-associated with the transaction further includes:

determining whether the product is associated with at least one of a consumer emergency and a consumer necessity; and

allocating a low credit risk to the product when the product is determined to be associated with at least one of a consumer emergency and a consumer necessity.

65. An system for managing a financial transaction associated with a financial account, wherein the transaction would cause an outstanding balance of the financial account to exceed a credit limit, the system comprising:

means for determining a type of product associated with the transaction;

means for determining a credit risk associated with the transaction based on the determined type of product associated with the transaction;

means for comparing the product credit risk associated with the threshold value;

and

means for approving the transaction based the comparison of the determined product credit risk with the threshold value.

66. The system of claim 65, wherein the means for determining the credit risk associated with the transaction further comprises:

means for determining whether the product is associated with at least one of a consumer emergency and a consumer necessity; and

means for allocating a low credit risk to the product when the product is determined to be associated with at least one of a consumer emergency and a consumer necessity.

**X. EVIDENCE APPENDIX**

Appellants do not rely on any evidence in this Appeal.



**XI. RELATED PROCEEDINGS APPENDIX**

To Appellants' knowledge, there are no related proceeding decisions.